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IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

W. P. NO. 2657/2003

PETITIONER : Ramesh Kumar Devangan, aged about 40years, son of Shri Sachchidanand Dewangan, Technical Supervisor, District Handloom Union (Sangh) Bilaspur (C.G.)

VERSUS

RESPONDENTS : 1. State of Chhattisgarh through Secretary, Village Industries Department, D.K.S. Bhawan, Raipur
2. The Director of Handloom, Sonakhan Bhawan, Ring Road, Raipur (Chhattisgarh)

P. R. No. 2496/03
Presented by Shri R. Pasella
dated 3.9.03

WRIT PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(18)

आदेश पत्रक

मामला क्रमांक WP No. 2657/03 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

3/9/2003

Shri R. Pradhan for the petitioner.

Shri Ranbir Singh, Govt. Advocate, for the State.

The petitioner has preferred this writ petition under Article 226/227 of the Constitution of India by which he has challenged the order dated 19/5/2003, whereby the petitioner has been dismissed from service.

The petitioner's case is that he was serving in the department of Handloom and was working in the Directorate of Handloom. During the tenure of his service, he was suspended from the service for committing the offence under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act and Section 120-B of I.P.C. and later on he was convicted by the trial court for the said offences. The petitioner has preferred an appeal before the High Court i.e. Cr.A. No.1264/02 and on filing the appeal the order of

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

19

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

conviction and sentence has been suspended by the High Court on 7/1/2003. Copy of the High Court order is Annexure-P/2. The petitioner has been dismissed without giving any opportunity of hearing or without giving any show cause notice, therefore, the impugned order is a colourable exercise and issued without any power, which is violative of principles of natural justice and violative of Article 311 of the Constitution of India. Therefore, the impugned order may be quashed.

I have heard the learned counsel for the parties.

Learned counsel for the petitioner submitted that the impugned order has been passed in violation of Rule 19 of the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966, as the same has been passed without following the procedure as envisaged in Rule 14 to 18. Learned counsel for the petitioner further submitted that even no notice was issued to the petitioner under Rule 19. Normally, the

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

20

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

government is issuing notice under Rule 19 before passing any order.

It is an admitted position that the petitioner has been convicted for the offence punishable under Sections 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act and Section 120-B of I.P.C. He has been sentenced to undergo imprisonment for five years and pay fine of Rs.5000/- vide judgment dated 28/11/2002 passed in Criminal Case No.7/99 in crime No.152/95. Based on that, Director, Handloom Directorate, vide order dated 19/5/2003 dismissed the petitioner from service vide Annexure-P/1.

As far as the fact of suspension of the conviction is concerned, I have perused the order Annexure-P/2 passed by this Court, in which only the execution of the sentence and fine has been suspended; the conviction of the appellant has not been suspended. Therefore, it has been wrongly

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(21)

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

mentioned in the writ petition that the conviction of the petitioner has been suspended.

Now coming to the question of issuing of notice before passing the dismissal order is concerned, Rule 19 of M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 provides that notwithstanding anything contained in Rule 14 to 18: (i) where any penalty is imposed on a government servant on the ground of conduct which has led to his conviction on a criminal charge, the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit. Therefore, Rule 19 of the Rules, 1966 does not prescribe any notice to be given to the employee before passing any order under this rule and for conviction on a criminal charge the disciplinary authority is authorised to pass orders as it deems fit.

Under Article 311 (2)(a), it lays down that the provisions of clauses (1) and (2) shall not be applicable where a person is

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

22

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge. Therefore, when the petitioner was convicted for the offence under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act and Section 120-B of I.P.C. and based on that conviction the petitioner has been dismissed from service by the Director (disciplinary authority), hence this order does not violate the provisions of Article 311of the Constitution of India or Rule 19 of the Rules, 1966. However, if the conviction is set aside by the appellate court, then the order of the dismissal will automatically cease to effect and the petitioner will be entitled for reinstatement or other benefits.

In view of the above, I do not find any substance in the writ petition. The same is liable to be dismissed and it is dismissed.

Sd/-
L.C.BHADOO
Judge

[पीछे देखिये